

Form 765A

**Terms and Conditions
of Purchase for
Fixed-Price Subcontracts**

February 1999

LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

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Los Alamos National Laboratory

Terms and Conditions by Reference for Fixed-Price Subcontracts

Definitions. For purposes of this subcontract in the following referenced clauses, the following terms shall mean:

- (a) *Government Contracting Officer* — a representative of the Government with the authority to enter into, administer, and/or terminate Government contracts and make related determinations and findings.
- (b) *DEAR* — The Department of Energy Acquisition Regulation.
- (c) *DOE* — The United States Department of Energy.
- (d) *FAR* — The Federal Acquisition Regulation.
- (e) *Goods* — All tangible property, except land or interest in land, and including tooling, equipment, materials supplies, etc., used in connection with a subcontract.
- (f) *Government* — The government of the United States of America.
- (g) *Subcontract* — A subcontract is a legally binding agreement issued under the Prime Contract and between the Laboratory and a third party that contains the essential terms and conditions under which goods or services will be furnished to the Laboratory.
- (h) *Subcontractor* — The party entering into the subcontract with The Regents of the University of California.
- (i) *Lower-tier subcontractor* — An individual or legal entity that has entered into an agreement with a Subcontractor for the delivery of goods or services necessary for the Subcontractor's performance of the subcontract.
- (j) *University* — The Regents of the University of California, a constitutional corporation and instrumentality of the State of California, which operates Los Alamos National Laboratory under Prime Contract W-7405-Eng-36 with the Department of Energy.
- (k) *University's procurement specialist* — The representative of the University of California authorized to address contractual issues, and execute and/or administer subcontracts on behalf of Los Alamos National Laboratory.

Preamble.

- (a) Pursuant to the terms of Contract W-7405-Eng-36, the University has agreed to appropriately treat requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions referenced herein are similar to terms and conditions used by federal agencies. However, the University is not a federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of the University.
- (b) The Subcontractor shall furnish the goods and/or services covered by the subcontract subject to all the terms and conditions referenced herein. The Subcontractor, in accepting the subcontract, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance of shipment of all or any portion of goods or the performance of all or any portion of the services covered by the subcontract shall constitute unqualified acceptance of all University terms and conditions. The terms of any quotation referred to in the subcontract are included and made a part of the subcontract only to the extent of specifying the nature of the goods or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the subcontract.
- (c) FAR and/or DEAR clauses are included by reference in this form; non-FAR and/or DEAR clauses are given in full text. The version of the FAR and/or DEAR clauses in effect as of the effective date of the subcontract shall apply with the same force and effects as if they were given in full text. Upon request, the procurement specialist will make the full text of the clauses available.

The following "A" Clauses Apply to Subcontracts at All Dollar Levels. FAR and DEAR clauses are incorporated into this Section "A" by reference with the same force and effects as if they were included in full text:

Clause A1 ¾ **Antikickback Procedures**
Clause A2 ¾ **Assignment of Claims**

Revision Date: February 1999

Clause A3 ¾ **Authorization and Consent**

Clause A4 ¾ **Buy American Act - Supplies**

Clause A5 ¾ **Changes**

Clause A6 ¾ **Collect Shipments** (Adapted from Commercial Bill of Lading Notations)

Goods purchased f.o.b. shipping point must be forwarded freight collect. (Note: Government freight rates do not apply to prepaid shipments. Excess costs will be deducted from the amount invoiced for the goods if the goods are not shipped collect in accordance with the following instructions). The following notation must appear on the bills of lading or express receipt:

"This shipment is for the account of the U.S. Government, which will assume the freight charges. It is subject to the terms and conditions set forth in the standard form of the U.S. Government's bill of lading and to any available special rates or charges."

Clause A7 ¾ **Convict Labor**

Clause A8 ¾ **Covenant Against Contingent Fees**

Clause A9 ¾ **Declared Valuation of Shipments**

Except as otherwise provided on the face of the subcontract, all shipments by the Subcontractor under the subcontract for the University's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification, and the bill of lading shall so note it.

Clause A10 ¾ **Delivery of Excess Quantities**

Clause A11 ¾ **Discounts for Prompt Payment**

Clause A12 ¾ **Disputes**

- (a) *Definitions.* For the purposes of this clause:

- (1) *Arbitration decision* means a decision of the Board in an arbitration pursuant to this clause.
- (2) *Board* means the Energy Board of Contract Appeals that has been established by the Secretary of Energy pursuant to § g(a)(1) of the *Contract Disputes Act of 1978*, 41 U.S.C. § 607(a)(1).
- (3) *Claim* means a written demand or written assertion by either contracting party seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of a contract term, or other relief arising under or relating to this subcontract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The Subcontractor may convert such submission into a claim if it is disputed either as to liability or amount, or is not acted upon in a reasonable time, by demanding a decision by the Procurement Manager.
- (4) *Counterclaim* means a claim asserted in a pleading filed with the Energy Board of Contract Appeals in an arbitration proceeding pursuant to this clause which claim arises from the same occurrence or transaction relating to this subcontract that is the subject matter of the opposing party's claim. Counterclaims do not need to be submitted to the Procurement Manager for decision.
- (5) *Procurement Manager* means a person designated by the University to decide claims of the Subcontractor or of the University against the Subcontractor.
- (6) *Rules of the Board* means the Board's rules promulgated at 10 C.F.R. Part 1023, Subpart A.

- (b) *Nature of This Subcontract.* This subcontract is not a Government contract and therefore is not subject to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The parties agree that the DOE is not a party to this subcontract and is not directly liable to the Subcontractor for claims and disputes within the purview of this clause. Further, the parties agree that,

for the purposes of this subcontract, the University is not an agent of the DOE, and that neither the presence of this clause in the subcontract nor provision for arbitration by the Board shall create or imply the existence of privity of contract between the Subcontractor and the DOE.

- (c) Scope of Clause. The parties agree that the rights and procedures set forth in this clause are the exclusive rights and procedures for the resolution of all claims and disputes arising under, or relating to, this subcontract. The parties shall be bound by an arbitration decision, which shall be enforceable as provided in the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the terms of this clause.

(d) Submission of Claims by Subcontractor; Procurement Manager's Decision.

(1) Unless otherwise provided in this subcontract, the Subcontractor must file any claim against the University within 30 calendar days after the Subcontractor knew or should have known the facts giving rise to the claim.

(2) The Subcontractor must submit any claim in writing first to the University's procurement specialist, who shall attempt to resolve the matter within a reasonable amount of time. If the University's procurement specialist does not resolve the claim in a manner satisfactory to the Subcontractor, and the Subcontractor desires to pursue further action, the Subcontractor must submit the claim in writing to the Procurement Manager.

(3) Within sixty days of receipt of the claim, the Procurement Manager must issue a decision or notify the Subcontractor of the time within which a decision will be issued, which shall be reasonable, taking into account such factors as the size and complexity of the claim and the adequacy of the information provided by the Subcontractor in support of the claim. If the Procurement Manager fails to issue a decision on a subcontract claim within the specified period, the Subcontractor may make a demand for arbitration with the Board as if the claim had been denied.

(4) The University's procurement specialist may also submit a claim against the Subcontractor in writing to the Procurement Manager, who shall issue a written decision.

(5) The decision of the Procurement Manager shall be final and conclusive unless the complaining party demands arbitration by the Board in accordance with the terms of this clause.

(e) Demand for Arbitration

If the decision of the Procurement Manager is not satisfactory to a complaining party, and the complaining party desires to pursue further action, the complaining party must, within 45 days after receipt of the Procurement Manager's decision, submit to the Board a written demand for arbitration of the claim. The Board shall arbitrate the claim and any counterclaims in accordance with the Rules of the Board.

- (f) Right to a Hearing; Costs. In any arbitration pursuant to this clause, both parties shall be afforded an opportunity to be heard and to present evidence in accordance with the Rules of the Board. Unless the Board orders otherwise, each party shall pay its own costs of prosecuting or defending an arbitration before the Board.
- (g) Arbitration Decisions Judicial Review. An arbitration decision shall be final and conclusive unless a party, within one hundred and twenty days after the date of receipt of a copy of the decision, files an action to vacate, modify, or correct the decision pursuant to the Federal Arbitration Act.
- (h) Subcontractor Performance Pending Claim Resolution. The Subcontractor shall proceed diligently with performance of this subcontract and shall comply with any decision of the University's procurement specialist or Procurement Manager, pending final resolution of any claim or dispute arising under, or relating to, this subcontract.
- (i) No Other Court Action. No action based upon any claim or dispute arising under, or relating to, this subcontract shall be brought in any court except as provided in this clause.
- (j) Choice of Law. This subcontract shall be governed by Federal law as provided in this subparagraph. Irrespective of the place of award, execution or performance, this subcontract shall be construed and

interpreted, and its validity determined, according to the Federal common law of government contracts as enunciated and applied to prime government contracts by the Board and Federal courts having appellate jurisdiction over the decisions of the Board rendered pursuant to the Contract Disputes Act of 1978. The Federal Arbitration Act and other Federal statutes (including the Contract Disputes Act of 1978), Federal rules (including the Federal Acquisition Regulation, the Department of Energy Acquisition Regulation, and the rules promulgated by the Board) shall apply in accordance with their respective provisions.

- (k) Interest. Interest on amounts adjudicated due and unpaid by a party shall be paid from the date the complaining party files a demand for arbitration with the Board. Interest on claims shall be paid at the rate established by the Secretary of the Treasury of the United States pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.

Clause A13 ¾ Document Approval Clause

- (a) If the subcontract requires the Subcontractor to furnish shop drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and/or test data, such documents must have University approval prior to performance of the subcontract. The Subcontractor is advised that approval by the University shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this subcontract, except as outlined in paragraph (b) below. Any work done prior to such approval shall be at the Subcontractor's risk.
- (b) If the above documents show variations from subcontract requirements, the Subcontractor shall describe such variations in writing at the time of submission. If the University approves any such variation(s), an appropriate and negotiated modification will be issued accordingly.

Clause A14 ¾ Equal Opportunity

Clause A15 ¾ Federal, State, and Local Taxes

Clause A16 ¾ Hazardous Material Identification and Material Safety Data

Clause A17 ¾ Inspection

The goods or services furnished shall be exactly as specified in the subcontract, free from all defects in Subcontractor's design, workmanship, and materials and, except as otherwise provided in the subcontract, shall be subject to inspection and test by the University at all times and places. The University or the Government has the right to inspect or test at the Subcontractor's or lower-tier subcontractor's facility and has the right to require the Subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. If, before final acceptance, any goods or services are found to be defective or not as specified, the University may reject them, require the subcontractor to correct them without charge, or require delivery of such goods or services at a reduction in price that is equitable under the circumstances. If the Subcontractor is unable or refuses to correct such items within a time deemed reasonable by the University's procurement specialist, the University's procurement specialist may terminate the subcontract in whole or in part. The Subcontractor shall bear all risks for rejected goods and services and, in addition to any costs for which the Subcontractor may become liable to the University under other provisions of the subcontract, shall reimburse the University for all transportation costs, other related costs, incurred, or payments to the Subcontractor according to the terms of the subcontract for unaccepted goods and services. Notwithstanding final acceptance and payment, the Subcontractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to and do not limit the University's rights provided in the clause.

Clause A18 ¾ Limitations on Disclosure or Dissemination of Information

- (a) The Subcontractor agrees that any information to which the Subcontractor or its personnel obtains access in the course of this subcontract shall be safeguarded from disclosure or dissemination in accordance with the terms of any markings or other guidance accompanying such information. Such information may include, but is not limited to: proprietary information or trade secrets of third parties; unpublished software or technical data generated at the University; business, administrative, or financial information of the University or third parties; and other University

information identified as privileged, proprietary, or otherwise subject to limitations with regard to dissemination.

- (b) The Subcontractor agrees to insert the substance of this clause, including this paragraph (b) in any lower-tier subcontract.

Clause A19 ¾ Notice of Labor Dispute

Clause A20 ¾ Officials Not to Benefit

Clause A21 ¾ Payments

Clause A22 ¾ Permits or Licenses

Clause A23 ¾ Pricing of Adjustments

When costs are a factor in any determination of a price adjustment pursuant to the Changes clause or any other provision of the subcontract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the FAR.

Clause A24 ¾ Printing

Clause A25 ¾ Property

Clause A26 ¾ Restrictions on Certain Foreign Purchases (May 1992)

Clause A27 ¾ Restriction on Disclosure and Use of Data

The University or the Government may be requested to disclose data contained in your offer. To avoid data in your offer from being disclosed to the public and/or otherwise being used by the University or the Government, the Subcontractor shall include the following legend in the title page of the offer and identify the data subject to restriction throughout the offer:

"This offer includes data that shall not be disclosed outside the University or the Government and shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than to evaluate this offer. If, however, the subcontract is awarded to this Subcontractor as a result of or in connection with the submission of this data, the University and the Government shall have the right to duplicate, use or disclose the data to the extent provided for in the resulting subcontract. This restriction does not limit the University's or the Government's rights to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheet(s) *{insert the numbers or other identifier}*."

Clause A28 ¾ Restrictions on Lower-tier Subcontractor Sales to the Government

Clause A29 ¾ Security

Clause A30 ¾ State of New Mexico Gross Receipts and Compensating Tax

Clause A31 ¾ Stop-Work Order

Clause A32 ¾ Termination for Convenience

Clause A33 ¾ Title

- (a) Title to the goods and services purchased hereunder shall pass directly from the Subcontractor to the Government (through the University) at the f.o.b. point shown, subject to the right of University to reject upon inspection.
- (b) **Identification.** To the extent directed by the procurement specialist, the Subcontractor shall identify University and DOE property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the University, as shall indicate its ownership by the University or DOE.

Clause A34 ¾ Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property

Clause A35 ¾ Warranty

The Subcontractor agrees that goods or services furnished under the subcontract shall be covered by the most favorable commercial warranties the Subcontractor gives to any customer for the same or substantially similar goods or services and the Subcontractor shall furnish copies of same to the University. The rights and remedies provided by such warranties are in addition to and do not limit any right afforded to the University by any other clause of the subcontract. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the goods or services by the University.

Clause A36 ¾ Whistleblower Protection

Clause A37 ¾ Work on University or Government Premises

To the extent that the Subcontractor's work under the subcontract involves performance by the Subcontractor or its lower-tier subcontractors at University or Government-owned sites or facilities, the following provisions shall apply:

- (a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University's procurement specialist, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each. The Subcontractor further agrees that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

- (b) **Indemnify and Hold Harmless.**

- (1) The Subcontractor shall indemnify and hold harmless the University and the Government from all claims, demands, cause of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborer's, materialmen's, and mechanic's liens upon the real property upon which the work is located or any other property of the University or the Government; and
- (2) Promptly notify the University's procurement specialist, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action or suits, or liens. The Subcontractor, at the request of the University's procurement specialist, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means.

The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed. But the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

- (c) **Cleaning up.** The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its lower-tier subcontractors; and, at the completion of the work, it shall remove all rubbish from and about the buildings and all of its and its lower-tier subcontractors tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Subcontractor and its lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or, in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.
- (d) **Employees.** The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall immediately remove such person from the work under the subcontract, and that person shall not again, without written permission of the University's procurement specialist, be assigned to work under the subcontract;

(e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workmen's Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University's procurement specialist with one copy of the certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.

(f) **Environment, Safety, Health, and Fire Protection.**

- (1) The Subcontractor shall take all reasonable precautions in the performance of the work under the subcontract to protect the health and safety of employees and of members of the public and shall comply with all health, safety, fire protection, and environmental regulations and requirements, including reporting requirements, of the University and DOE. The University's procurement specialist shall notify the Subcontractor in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails to comply with said regulations or requirements of the University and DOE, the University's procurement specialist may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start work order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.
- (2) The Subcontractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon University or Government premises. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on University or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the Subcontractor, its lower-tier subcontractors, the University, or other persons.

The following "B" Clauses Also Apply to Subcontracts Exceeding \$2500, and are incorporated into this Section "B" by reference with the same force and effects as if they were included in full text:

Clause B1 ¾ **Affirmative Action for Handicapped Workers**

Clause B2 ¾ **Contract Work Hours and Safety Standards Act - Overtime Compensation**

Clause B3 ¾ **Fair Labor Standards Act and Service Contract Act.** *Note: This clause applies only to subcontracts for fixed-price services exceeding \$2,500 that are written for multiple years or contain options.*

Clause B4 ¾ **Fair Labor Standards Act and Service Contract Act - Price Adjustment.** *Note: This clause applies only to subcontracts for fixed-price services exceeding \$2,500 that are subject to the Service Contract Act, are not for multiple years, and do not have options to renew.*

The following "C" Clauses Also Apply to Subcontracts Over \$10,000, and are incorporated into this Section "C" by reference with the same force and effects as if they were included in full text:

Clause C1 ¾ **Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era**
Clause C2 ¾ **Examination of Records by Comptroller General**
Clause C3 ¾ **Affirmative Action for Special Disabled and Vietnam Era Veterans**
Clause C4 ¾ **Walsh-Healey Public Contracts Act**

The following "D" Clauses Also Apply to Subcontracts Over \$25,000. FAR and DEAR clauses are incorporated into this Section "D" by reference with the same force and effects as if they were included in full text:

Clause D1 ¾ **Default**
Clause D2 ¾ **Notice and Assistance Regarding Patent and Copyright Infringement**
Clause D3 ¾ **Patent Indemnity**
Clause D4 ¾ **Preference for U.S. -Flag Air Carriers**
Clause D5 ¾ **Reporting of Royalties**

- (a) If any royalty payments are reflected in the subcontract price to the University, the Subcontractor agrees to report in writing to the University during performance of this subcontract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification of the patents or other basis on which the royalties are to be paid. The approval of the University of any individual payments or royalties shall not stop the University or DOE at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.
- (b) The Subcontractor agrees to include the provisions of this clause, appropriately modified as to parties, in all lower-tier subcontracts exceeding \$25,000 unless otherwise approved by the University.

Clause D6 ¾ **Utilization of Labor Surplus Area Concerns**
Clause D7 ¾ **Utilization of Small Business Concerns and Small Disadvantaged Business Concerns**
Clause D8 ¾ **Utilization of Women-Owned Small Business**

The following "E" Clauses Also Apply to Subcontracts Over \$100,000, and are incorporated into this Section "E" by reference with the same force and effects as if they were included in full text:

Clause E1 ¾ **Clean Air and Water**
Clause E2 ¾ **Limitation on Payments to Influence Certain Federal Transactions**
Clause E3 ¾ **Termination for Convenience (For Subcontracts Exceeding \$100,000)**

The following "F" Clauses Apply Only When Cited in the Request for Quotation and/or Subcontract. When cited, the FAR and DEAR clauses incorporated by reference hereafter, apply with the same force and effects as if they were included in full text:

Clause F1 ¾ **Administration of Cost Accounting Standards**
Clause F2 ¾ **Classification**
Clause F3 ¾ **Cost Accounting Standards**
Clause F4 ¾ **Disclosure and Consistency of Cost Accounting Practices**
Clause F5 ¾ **Extended Warranty**

Notwithstanding any other provisions of the subcontract, the Subcontractor warrants that the goods or services furnished shall be of the most suitable grade and exactly as specified in the subcontract. Such warranty shall include the following: performance, workmanship, labor, materials, and the Subcontractor's design or engineering contributions. If a defect is discovered in any goods or services covered in the subcontract, the Subcontractor shall correct at its expense such defects as are reported within one year of final acceptance or such longer period as the Subcontractor may offer in its most favorable applicable warranty. Upon

expiration of the applicable warranty period, all such liability shall terminate except for fraud or such gross mistakes as amount to fraud, latent defects, or specific failure to comply with the terms of the subcontract. This warranty is in addition to the Warranty clause in Section A.

Clause F6 ¾ Foreign Ownership, Control, or Influence Over Subcontractors

Clause F7 ¾ Inspection of Goods ¾ Fixed Price

Clause F8 ¾ Inspection of Services — Fixed Price

Clause F9 ¾ Labor Surplus Area Subcontracting Program

Clause F10 ¾ Notice of Small Disadvantaged Business Set-Aside

(a) **Definitions.** "Small business concern," as used in this clause, means a small business concern

- (1) That is at least 51 percent owned by one or more socially and economically disadvantaged persons, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged persons; and
- (2) Whose management and daily operations are controlled by one or more such persons.

The Subcontractor shall presume that socially and economically disadvantaged persons include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Americans and other minorities, or any other person found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Subcontractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

"Small disadvantaged business concern," as used in this clause, means a small business concern.

(b) **General.**

- (1) Proposals are solicited from small disadvantaged business concerns. Proposals received from concerns that are not small disadvantaged business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.

Clause F11 ¾ Notice of Total Small Business Set-Aside

Clause F12 ¾ Nuclear Hazards Indemnity Agreement

Clause F13 ¾ Organizational Conflicts of Interest

Clause F14 ¾ Price Reduction for Defective Cost or Pricing Data

Clause F15 ¾ Price Reduction For Defective Cost or Pricing Data - Modifications

Clause F16 ¾ Priorities and Allocations

Clause F17 ¾ Rights in Data - General

Clause F18 ¾ Security Access Authorization and Operations Security

- (a) **Access Authorization.** Subcontractor personnel engaged in the performance of work under a subcontract on University property, government premises, or offsite facilities are required to possess a DOE access authorization ("L" or "Q" clearance), and must comply with the following requirements. The Subcontractor shall be responsible for
- (1) Completing and submitting all necessary application forms for authorized access in advance of the need. Application forms may be obtained from the University's Operational Security and Safeguards (FSS) Division. All personnel granted an access authorization will be briefed by the University, on access to classified matter, security areas, and security requirements;
 - (2) Safeguarding information that may come into the Subcontractor's possession or within the purview of its work. Unless otherwise authorized by the University's procurement specialist in writing, within 30 days of completion or termination of the subcontract, the Subcontractor shall (a) return to the University all classified matter and badges in the possession of the Subcontractor or person under the Subcontractor's control, and (b) furnish to the University a Certificate of Nonpossession (for Offsite Facilities) as well as the Security Termination Statements (Form 5631.29) for all affected personnel; and

- (3) Ensuring all cleared employees comply with DOE's security requirements including the provisions of DOE Order 5631.1B, "Security Education and Awareness Program."

(b) **Operations Security Program.** The Subcontractor agrees to implement and sustain a DOE Operations Security (OPSEC) Program in accordance with the provisions of the Laboratory's OPSEC Guidance for LANL Contractors Manual when awarded subcontracts involving access to and protection of classified or sensitive information, nuclear materials or other safeguards and security interests.

(c) Whenever the work under this order requires the issuance of "Q-cleared," "L-cleared," or "Escort Required" badges, the University may withhold final payment to the Subcontractor until all such badges are returned to the University's procurement specialist as required in paragraph (a)(2) above.

Clause F19 ¾ Sensitive Foreign Nations Control

Clause F20 ¾ Service Contract Act of 1965 (For Subcontracts \$2500 or Less)

Clause F21 ¾ Service Contract Act of 1965 (For Subcontracts Exceeding \$2500)

Clause F22 ¾ Small Business and Small Disadvantaged Business Subcontracting Plan

Clause F23 ¾ Subcontractor Cost or Pricing Data

Clause F24 ¾ Subcontractor Cost or Pricing Data - Modifications

Clause F25 ¾ Workplace Substance Abuse Programs at DOE Sites